

Before the
Federal Communications Commission
Washington, DC 20554

OCT 7 2002

In the Matter of)

Request for Review of the)
Decision of the)

Universal Service Administrator by)

Maria L. Varisco-Rogers Charter School, Inc.)
Newark, New Jersey)

File No. SLD-224938

Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45✓

Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

CC Docket No. 97-21

ORDER

Adopted: October 4, 2002

Released: October 7, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Maria L. Varisco-Rogers Charter School, Inc. (Varisco-Rogers Charter), Newark, New Jersey.¹ Varisco-Rogers Charter seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting Varisco-Rogers Charter's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we affirm SLD's rejection and deny Varisco-Rogers Charter's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on March 15, 2002, denying Varisco-Rogers Charter's request for discounted services under the schools and libraries universal service support mechanism.³ Specifically, SLD denied Varisco-Rogers Charter's request for discounts for telecommunications services, Internet Access, and internal connections, Funding Request Numbers (FRNs) 518280, 518303, 562582, and 522611.⁴ On August 14, 2002, Varisco-Rogers Charter filed an appeal of SLD's decision in which it claimed to submit

¹ Letter from Teresa Segarra, Maria L. Varisco-Rogers Charter School, Inc., to Federal Communications Commission, filed August 26, 2002 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Teresa Segarra, Maria L. Varisco-Rogers Charter School, Inc., dated March 15, 2002 (Funding Commitment Decision Letter).

⁴ *Id.*

documentation to SLD showing that Varisco-Rogers Charter had the ability to pay the applicant's share of the funding requests.' On August 15, 2002, SLD issued an Administrator's Decision on Appeal indicating that it would not consider Varisco-Rogers Charter's appeal because it was received more than 60 days after the March 15, 2002 Funding Commitment Decision Letter was issued.⁶ Varisco-Rogers Charter subsequently filed the instant Request for Review with the Commission.

3. In its Request for Review, Varisco-Rogers Charter restates the substance of its original appeal to SLD.⁷ Specifically, Varisco-Rogers Charter claims it sent another letter dated March 25, 2002 to SLD which it attached to its Request for Review.' This letter appears to be an appeal to SLD concerning its March 15, 2002 Funding Commitment Decision Letter.' Varisco-Rogers Charter also claims that it called SLD to check on the status of its appeal with SLD, but the SLD representative was unable to find a copy of Varisco-Rogers Charter's March 25, 2002 appeal.' SLD records, however, do not show that such an appeal was filed with SLD until August 14, 2002, nor has Varisco-Rogers Charter provided any evidence to corroborate Varisco-Rogers Charter's claim that such a letter was sent and received by SLD during the March 2002 time frame. Persuasive evidence that the Commission or SLD received a communication could include a postmarked, certified, or registered mail receipt.' The proffered copy of the March 25, 2002 letter, without more, is insufficient to demonstrate that an appeal was timely filed with SLD.

4. For requests seeking review of decisions issued on or after August 13, 2001 under section 54.720(b) of the Commission's rules, any such appeal must be filed with the Commission or SLD within 60 days of the issuance of the decision that the party seeks to have reviewed.¹² Documents are considered to be filed with the Commission or SLD only upon receipt.¹³ Because the Varisco-Rogers Charter's Request for Administrator Review was not filed within the

⁵ Letter from Teresa Segarra, Maria L. Varisco-Rogers Charter School, Inc., to Schools and Libraries Division, Universal Service Administrative Company, filed August 14, 2002 (Request for Administrator Review).

⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Teresa Segarra, Maria L. Varisco-Rogers Charter School, Inc., dated August 15, 2002 (Administrator's Decision on Appeal).

⁷ Request for Review; *see also* Request for Administrator Review,

⁸ *id.*

⁹ Request for Review, Attachment.

¹⁰ Request for Review.

¹¹ *See Request for Review of the Decision of the Universal Service Administrator by Pediatric Library of Rainbow Babies and Children's Hospital, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-23380, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 3416 (Com. Car. Bur. 1999).

¹² 41 C.F.R. § 54.720(b). *See Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. December 26, 2001), as corrected by *implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. December 28, 2001 and January 4, 2002).

¹³ 47 C.F.R. § 1.7.

requisite 60-day period, we affirm the Administrator's Decision on Appeal and deny the instant Request for Review.

5. To the extent that Varisco-Rogers Charter is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules for its underlying appeal of SLD's denial of discounted services, **FRNs** 518280, 518303, 522611, and 562582, we deny that request as well.¹⁴ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹⁵ Varisco-Rogers Charter has not shown good cause for the untimely filing of its initial appeal with SLD.

6. We conclude that Varisco-Rogers Charter has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁶ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits. The proffered copy of the March 25, 2002 letter, without more, is insufficient to demonstrate that an appeal was timely filed with SLD.

7. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the burden of adhering strictly to its filing deadlines." In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes its appeal to be considered on the merits. We therefore find no basis for waiving the deadline for filing its appeal with SLD.

¹⁴ See 47 C.F.R. § 54.720(b).

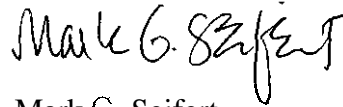
¹⁵ See 47 C.F.R. § 1.3

¹⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)

¹⁷ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Conn. Car. Bur. rel. November 24, 2000), para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility for understanding all relevant program rules and procedures.").

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Maria L. Varisco-Rogers Charter School, Inc., Newark, New Jersey, on August 26, 2002, and the request to waive the 60-day time limit in which to **file** an appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
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